

CALIFORNIA BOARD OF LEGAL SPECIALIZATION OF THE STATE BAR OF CALIFORNIA



180 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105-1639
TELEPHONE: (415) 538-2120



CRIMINAL LAW CERTIFICATION EXAM

Date	Sunday, August 14, 2005 9:00 a.m. – 4:00 p.m.
Registration deadline	Friday, July 1, 2005
Exam sites	Westin at San Francisco Airport Radisson at Los Angeles Airport
Fee	\$300 writing (\$350 if using a laptop PC) <i>fee includes a box lunch</i>
Exam format	<p>The exam is divided into two three-hour sessions – the morning session includes 50 multiple-choice questions and two essay questions; the afternoon session includes four essay questions. There are no optional questions; each examinee is expected to answer all questions on the exam. Criminal Law examinees may choose to take either the state or federal version of the exam.</p> <p>The 50 multiple-choice questions, worth three points each, are designed to be answered in approximately 90 minutes. Each essay question is worth 75 points and is designed to be answered in approximately 45 minutes.</p>
Scoring	The maximum number of points available is 600. A passing score is 420 points, or 70%. Exams with scores between 65-70% are re-read by a Committee of Reappraisers. The decision of the Committee is final, pursuant to section 8.3 of the Rules Governing the State Bar of California Program for Certifying Legal Specialists. Results are mailed only after all reappraisals have been completed.
Reference materials	No reference materials are allowed during the exam.
Testing accommodations	Available at both sites. Contact ivonne.broussard@calbar.ca.gov or (415) 538-2145 for more information.
Study resources	See attached standards for certification, exam specifications, and sample exam questions.

For more information, visit www.californiaspecialist.org

THE STANDARDS FOR CERTIFICATION AND RECERTIFICATION IN CRIMINAL LAW

1.0 DEFINITION

Criminal law encompasses the prosecution or defense of persons accused of crimes in state or federal court, and minors subject to wardship proceedings in juvenile court based on allegations of their criminal misconduct. The field includes both trial and appellate advocacy, in addition to such ancillary proceedings as criminal and civil forfeitures.

2.0 TASK REQUIREMENT FOR CERTIFICATION

An applicant must demonstrate that within the five (5) years immediately preceding the initial application, he or she has been substantially involved in the practice of criminal law, which shall include the showing that he or she has been principal counsel of record in criminal proceedings as follows:

- 2.1 Five (5) jury trials in California, or in any United States District Court, in cases submitted to the jury for decision, wherein the offenses charged were felonies;
- 2.2 Five (5) additional jury trials in any jurisdiction in cases submitted to the jury for decision, regardless of the nature of the offenses;
- 2.3 Forty (40) additional criminal matters, which may include juvenile court proceedings relating to allegations of criminal misconduct, to disposition in a Municipal or Superior Court within the State of California or a United States District Court or Federal Magistrate Court;
- 2.4 Any two (2) of the following
 - 2.4.1 Five (5) hearings, pursuant to section 1538.5 of the Penal Code or any other motion to suppress evidence, in which oral testimony was taken and in which decisions have been rendered, and three (3) petitions or answers filed in extraordinary writ proceedings in the following courts: United States Supreme Court, United States Court of Appeals, United States District Court, California Supreme Court, California Court of Appeal, California Superior Court;
 - 2.4.2 Three (3) appeals in the following courts in which briefs were filed by the applicant in the following courts: United States Supreme Court, United States Court of Appeals, United States District Court, California Supreme Court, California Court of Appeal, California Superior Court; or

- 2.4.3 Five (5) additional jury trials submitted to the jury for decision, regardless of the nature of the offense.

Principal counsel is the attorney who presents criminal proceedings to the court or jury during the entire proceeding or a substantial part thereof. More than one attorney may be principal counsel as long as each is involved in presentation of a substantial part of the criminal proceeding.

3.0 ALTERNATIVE TO TASK REQUIREMENT FOR CERTIFICATION

As an alternative to the criminal trial practice task requirements listed in section 2.0 above, an applicant may qualify by showing:

- 3.1 That the applicant has had substantial involvement in other areas of law practice requiring similar skills as criminal trial practice, such as:
 - 3.1.1 Litigation in contested civil matters involving jury trials;
 - 3.1.2 Appellate practice in either criminal or noncriminal matters in proceedings in which decisions after hearing have been reached; and
 - 3.1.3 Practice in a government agency in which the practitioner is engaged in activities substantially equivalent to criminal law practice.
- 3.2 That the applicant has engaged in research, writing and/or special studies of criminal law and procedure; or
- 3.3 That the applicant possesses some, but not all, of the criminal trial practice task requirements of section 2.0 above; or
- 3.4 Any combination of sections 3.1.1, 3.2 and 3.3 above, which the applicant can show amounts to a substantial equivalent of the criminal law practice task requirements of section 2.0 above; or
- 3.5 Any combination of section 3.1.1, 3.2 and 3.3 above, although not amounting to a substantial equivalent of the criminal law practice task requirements of section 2.0 above; and
 - 3.5.1 Where the geographical location of the applicant prohibits his or her

completing the criminal law practice task requirements of section 2.0 above; or

3.5.2 The type of practice of the applicant prohibits his or her completing the criminal law practice task requirements of section 2.0 above; and

3.5.3 Where the exclusion of the applicant from certification as a result of section 3.5.1 or 3.5.2 above would amount to arbitrary exclusion of a practitioner.

4.0 EDUCATIONAL REQUIREMENT FOR CERTIFICATION

An applicant must show that, within the three (3) years immediately preceding application for certification, he or she has completed not less than forty-five (45) hours of educational activities specifically approved for criminal law as follows:

- 4.1 Evidence;
- 4.2 Trial Advocacy;
- 4.3 Substantive Criminal Law and Procedure;
- 4.4 Writs, Appeals and Ancillary Proceedings;
- 4.5 Other subjects related to criminal law.

5.0 INDEPENDENT INQUIRY AND REVIEW REQUIREMENT FOR CERTIFICATION

- 5.1 An applicant shall submit the names and mailing addresses of the following:
 - 5.1.1 Four (4) lawyers who practice in the same area as the applicant; one (1) judge of a Justice, Municipal or Superior Court within the state of California, or a United States District Court or Federal Magistrate Court, chosen by the applicant, before whom the applicant has appeared as an advocate in criminal proceedings within the two (2) years immediately preceding application; and three (3) California lawyers with whom the applicant has tried a criminal case, but with whom the applicant is not associated.
 - 5.1.2 Opposing counsel, judges and any co-counsel in the last two (2) jury trials conducted by the applicant, if any; and
 - 5.1.3 Opposing counsel, judges and any co-counsel in the last two (2) preliminary hearings conducted by the applicant, if any; and
 - 5.1.4 Opposing counsel, judges and any co-counsel in the last two (2) writ or appellate matters conducted by the applicant as well as copies of all briefs filed by the applicant, if any; and

5.1.5 Opposing counsel, hearing officer or referee and any co-counsel in the last two (2) administrative hearings conducted by the applicant, if any.

5.2 The Commission shall select four (4) lawyers or judges who practice or preside in the same area as the applicant for further evaluation of the applicant's proficiency in the practice of criminal law.

6.0 TASK REQUIREMENT FOR RECERTIFICATION

An applicant for recertification must show that:

- 6.1 During the current certification period he or she has personally attended a trial court in California or in any United States District Court, for twenty-five (25) days as principal counsel of record for a party in a criminal jury trial during the phase of trial commencing at the start of voir dire examination and ending when the case is submitted to the jury or is otherwise earlier concluded. Attendance in court during any part of a day shall be counted as attendance for a full day. Military courts-martial and trials conducted pursuant to the Lanterman-Petris-Short Act shall not be counted as criminal jury trials; or,
- 6.2 During each year of the current five (5) year certification period he or she has participated in five (5) days of criminal jury trials as specified in section 6.1 above; or
- 6.3 During the current five (5) year certification period he or she has presided as a judicial officer for at least sixty (60) days over misdemeanor or felony jury trials or juvenile court proceedings under section 602 of the Welfare and Institutions Code.

7.0 ALTERNATIVE TO TASK REQUIREMENT FOR RECERTIFICATION

As an alternative to the criminal trial practice task requirement listed in section 6.0 above, an applicant may qualify by showing;

- 7.1 That the applicant has had substantial involvement in other areas of law practice requiring similar skills as criminal trial practice, such as;
 - 7.1.1 Litigation in contested civil matters involving jury trials;
 - 7.1.2 Appellate practice in either criminal or noncriminal matters in proceedings in which decisions after hearing have been reached;
 - 7.1.3 Practice in a government agency in which the practitioner is engaged in activities substantially equivalent to criminal law practice; and
 - 7.1.4 Active full-time supervision of criminal trial attorneys, which includes one, or a combination of, the following:

- 7.1.4.1 Charging of complaints;
 - 7.1.4.2 Filing of complaints;
 - 7.1.4.3 Trial strategy and preparation;
 - 7.1.4.4 Appellate review;
 - 7.1.4.5 Legal motions;
 - 7.1.4.6 Preparation and presentation of in-house training.
- 7.2 That the applicant has engaged in research, writing and/or special studies of criminal law and procedure; or
 - 7.3 That the applicant possesses some, but not all, of the criminal trial practice task requirements of section 6.0 above; or
 - 7.4 Any combination of section 7.1.1, 7.2 and 7.3 above, which the applicant can show amounts to substantial equivalent of the criminal law practice task requirements of section 6.0 above; or
 - 7.5 Any combination of 7.1.1, 7.2 and 7.3 above although not amounting to a substantial equivalent of the criminal law practice task requirements of section 6.0 above; and
 - 7.5.1 Where the geographical location of the applicant prohibits his or her completing the criminal law practice task requirements of section 6.0 above; or
 - 7.5.2 The type of practice of the applicant prohibits his or her completing the criminal law practice task requirements of section 6.0 above; and
 - 7.5.3 Where the exclusion of the applicant from certification as a result of section 7.5.1 or 7.5.2 above would amount to arbitrary exclusion of a practitioner.

8.0 EDUCATIONAL REQUIREMENT FOR RECERTIFICATION

An applicant for recertification must show that during the current five (5) year certification period he or she has completed not less than sixty (60) hours of educational activities specifically approved for criminal law specialists.

9.0 INDEPENDENT INQUIRY AND REVIEW REQUIREMENT FOR RECERTIFICATION

An applicant for recertification shall demonstrate proficiency in criminal law through independent inquiry and review in the same manner as set forth in section 5.0 for certification.

Specifications For State Bar of California Criminal Law Certification Examination

Purpose of the Examination: The Criminal Law Examination consists of a combination of essay and multiple-choice questions. It is designed to verify the applicant's knowledge of and proficiency in the usual legal procedures and substantive law that should be common to specialists in the field as represented by the skills listed below. We recognize that these skills are interrelated, which may require that you apply several skills in responding to a single exam question. Also, the order of the skills does not reflect their relative importance, nor does the skill sequence represent an implied order of their application in practice.

Your answers to the exam questions should reflect your ability to identify and resolve issues, apply the law to the facts given, and show knowledge and understanding of the pertinent principles and theories of law, their relationship to each other, and their qualifications and limitations. Of primary importance for the essay questions will be the quality of your analysis and explanation.

These skill levels apply to state practitioners and the corresponding federal practitioners. Those attorneys who limit their practice to federal or state law will only be required to answer questions related to their respective area.

Knowledge of the following fundamental lawyering skills may be assessed:

Skill 1: Professional Responsibility

- 1.1 Duties to clients, opposing counsel and the Court
- 1.2 Conflicts of interest
- 1.3 Dual representation

Skill 2: Crimes & Defenses

- 2.1 DUIs
- 2.2 Murder/Special Circumstances
- 2.3 Sex crimes
- 2.4 Tactics/strategies
- 2.5 Mental health issues
- 2.6 Conspiracy
- 2.7 Crimes against property
- 2.8 Crimes against persons
- 2.9 Narcotics
- 2.10 Deferred entry of judgment/Diversion
- 2.11 Victim restitution

Skill 3: Trial Practice and Procedure

- 3.1 Arrest and bench warrants, summons/subpoenas
- 3.2 Arraignment
- 3.3 Pleadings, joinder and severance
- 3.4 Grand Jury proceedings
- 3.5 Discovery
- 3.6 Preliminary hearings
- 3.7 Pre-trial and trial publicity
- 3.8 Right to speedy trial
- 3.9 Line-ups and identification
- 3.10 Search and seizure
- 3.11 Informants
- 3.12 Pre-trial motion practice
- 3.13 Confessions and admissions
- 3.14 Trial motions

- 3.15 Evidence
- 3.16 Expert witnesses
- 3.17 Jury selection
- 3.18 Jury instructions
- 3.19 Misdemeanor sentencing
- 3.20 Felony sentencing
 - 3.20.1 California Rules of Court
 - 3.20.2 Prior convictions
 - 3.20.3 Enhancements
 - 3.20.4 Probation
 - 3.20.5 Three Strikes
 - 3.20.6 Expungements
 - 3.20.7 Immigration consequences
 - 3.20.8 Duties after judgment
 - 3.20.9 Writs

Skill 4: Appeals

- 4.1 Misdemeanor appeals
- 4.2 Felony appeals
- 4.3 Federal Habeas Corpus

Skill 5: State Juvenile

- 5.1 W&I 707
- 5.2 W&I 602
- 5.3 Disposition
- 5.4 Detention hearings
- 5.5 Age/competency
- 5.6 Records

Skill 6: Federal Sentencing

- 6.1 Guidelines
- 6.2 Mandatory minimum/maximum
- 6.3 Violations of probation and supervised release
- 6.4 Bureau of Prisons issues

STATE BAR OF CALIFORNIA CRIMINAL LAW CERTIFICATION EXAM

SAMPLE QUESTIONS

Sample Question #1 – State Law

You were appointed to represent the defendant who was charged with multiple non-capital felonies. You completed your investigation and discovery. At the calendar department's status conference, the district attorney offered you a deal which would have resulted in the defendant doing one tenth of his maximum exposure time in state prison. The calendar judge was willing to go along with the offer.

You communicated this offer to the defendant. He asked you your opinion on the deal. You advised him that this was a very good deal and you strongly advised him to take the district attorney's offer. The defendant rejected the offer. You were assigned to a trial judge. In the trial court the defendant wanted to fire you. The judge cleared the courtroom and conducted a hearing. The defendant claimed that you were incompetent, unprepared, and that you were selling him out. The defendant further wanted to represent himself. The judge heard the defendant's claims, took evidence and then denied everything the defendant requested. The judge ordered that the total record of the proceedings be sealed and marked confidential.

The defendant then asked if he could take the original deal on a no contest plea. The district attorney agreed and the judge was willing to accept the plea for the sentence indicated. In due course, judgment was pronounced and the defendant was sentenced to state prison. Within 10 days, the defendant wrote to the court from state prison saying he wanted to appeal his conviction. The trial judge re-appointed you only to advise the defendant how to proceed.

- A. What are your obligations under this appointment to the court and to your client? Discuss.**
- B. What must your client do to perfect his appeal? Discuss.**
- C. What should be included in the record?**

Sample Question #2 – State Law

Police were called by a firefighter who had detained defendant near a suspicious fire at an elementary school. The defendant had been detained originally by a passerby who turned him over to the fireman. When the police arrived, they took custody of the defendant. The passerby had left before the police arrived. When the police arrived, the fire was out. The police got permission from defendant to search him. A lighter was recovered from his pocket. The police Mirandized him, he agreed to talk, and he gave incriminating answers to the police questions. At trial, the defendant objected to the admission of the lighter and the statements.

- A. What arguments could the defendant make in a motion to suppress the statements and the lighter? Discuss.**
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Sample Question #3 – State Law

Defendant, a 22 year old male, engaged in several acts of sexual intercourse and oral copulation with a 15 year old female during a month-long period while he was a guest in her parent's home. He claims all acts were consensual. She never claimed any force or fear were involved. She did state however that she had been drinking by herself before, and was very sleepy during, the first two times she had sex with the defendant.

- A. What are the potential criminal charges that the defendant faces? Discuss.**
 - B. What would be the potential defenses to those charges, and the justification for those charges? Discuss.**
 - C. What, if convicted, are the potential penalties that the defendant could receive? Discuss.**
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Sample Question #4 – State Law

Sally Smith and her husband Joe Smith are charged with Penal Code §273(d), corporal injury to their child. The child was removed from their custody by social services. When visiting the child

at the foster home the couple videotaped their visit. Interactions with the child and the couple's conversations were recorded on the videotape. Sally gave the videotape to her attorney. The attorney decided it was incriminating and elected not to use the tape in trial. The prosecution heard that the tape was made and issued a subpoena *duces tecum* for the tape to be produced in court.

- A. What motion can the defense make to prevent the prosecution from getting the tape? Discuss.**
- B. What are the best arguments in support of the motion? Discuss.**
- C. What arguments should the prosecution make in support of obtaining the tape? Discuss.**

Sample Question #5 – State Law

The defendant entered the pro shop of a country club, and concealed two \$500 golf clubs under his raincoat and attempted to walk out the front door without paying for the clubs. The golf pro working at the cash register saw the tops of the golf clubs protruding from the back of the defendant's coat and yelled at the defendant to stop. The defendant was tackled and held down by a group of golfers waiting to tee off on the first hole.

The defendant is a 30-year-old homeless college graduate, who majored in mathematics. The defendant's IQ tests at genius level, however he has been diagnosed with a developmental disability called "Asbergers Syndrome." He excels at mathematics but he is not able to maintain a relationship with anyone, and has the social graces of a teenager.

The defendant is charged in a two-count felony complaint with a violation of Penal Code §459 and Penal Code §487(a). The complaint alleges that the defendant was previously convicted in 1992 of armed robbery, and had a previous conviction in 1990 for Penal Code §459. At the preliminary hearing, the prosecutor introduces the Abstract of Judgment and State Prison Commitment documentation on the two priors, which indicate that the defendant was convicted in 1992 of robbery pursuant to Penal Code §211, with an additional allegation that the defendant was armed with a weapon pursuant to Penal Code §12022(a)(1), and in the second conviction in 1990, the defendant was convicted of Penal Code §459. The defendant has told you that the 1992

robbery conviction involved an unloaded and inoperable handgun, and that the 1990 burglary case involved the burglary of a hardware store at night.

The prosecuting attorney requests that bail be set in the amount of One Million Dollars (\$1,000,000) since, "This is a three-strikes case." The prosecutor's offer to settle the case involves "Plead to the sheet, the offer is twenty-five (25) years to life."

- A. Discuss the potential sentences that the defendant could receive.**
- B. Discuss defendant's possible punishment.**
- C. Discuss what motions, if any, should be filed on behalf of the defendant, including the factual arguments to be made in support of any motions.**

Sample Question #6 – State Law

Defendant opened a new office in a "bad" part of town. Because he worked in the office at night, he purchased and registered a small .22 caliber pistol which he kept in the office.

After a while, he found he had no use for the gun and put it in an empty gym bag in the office closet.

Two years later, defendant had to take a short notice flight to Chicago. Hurriedly, he grabbed the "empty" gym bag and stuffed his brochures into it.

At the airport, the gun was discovered by the x-ray screeners. All witnesses in the police report stated that the defendant seemed genuinely surprised that his "lost" gun was in the bag.

Defendant had no criminal record and was charged with Penal Code §12025.

- A. What are the defenses to the charge? Discuss.**

Sample Question #1 – Federal Law

Learn With Us, Inc. (LWU) is a private, post-secondary school which provides vocational training in a wide variety of blue collar fields. LWU has enrolled students under the PELL Grant program administered by the U.S. Department of Education (DOE), by which financially eligible

students may receive tuition grants from the federal government. The PELL grants are paid directly by DOE to LWU through an electronic system by which LWU is authorized to draw down money directly from the DOE account into the LWU account through an electronic transfer system. If the student fails to show up for class, or shows up but drops out during the semester, the student is deemed a “no-show” and LWU is obligated to refund the PELL funds back to DOE by electronically transferring the tuition funds back into the DOE account. It is the obligation of LWU to keep track of no-show students and make refunds to DOE. Head is the president of LWU.

In recent years, LWU had been audited by DOE and had been warned about the necessity of keeping proper records in regard to financial aid eligibility and the payment of refunds back to DOE. In response to this agency warning, Head developed a compliance program which established specific guidelines within LWU for applying DOE’s policies and procedures regarding PELL Grant funds.

One day, without prior warning, FBI agents showed up at the LWU corporate office with a search warrant authorizing the seizure of all financial records pertaining to LWU’s participation in the PELL Grant program, including records reflecting student enrollments, determinations of financial aid eligibility, no-show students and refund payments back to DOE. The three page affidavit in support of the search warrant said nothing about LWU’s compliance program.

Head immediately called Amanda, a white collar defense lawyer who had been instrumental in developing the company’s compliance program.

A. What advice should Amanda provide to Head regarding the conduct of the search? Your answer should address, but not be limited to, advice on such matters as:

- **what a typical search warrant at a corporate office allows the government to search for;**
- **the manner in which the search is typically conducted;**
- **the instructions that defense counsel should give corporate employees regarding the search.**

B. Assuming the FBI seizes documents necessary for LWU’s continued operation, what remedies are available

to LWU?

C. If Head is later prosecuted for his activities at LWU, what grounds exist to challenge the admissibility of the documents? What arguments can be made in support of these grounds?

Sample Question #2 – Federal Law

Debra, a single mom, aged 43, has been dating Bill since 1995. Bill is a con artist, who has been bilking people out of money for years, fraudulently posing as a lender of venture capital funds. Bill advertised that, for a fee of \$50,000, he would obtain loans for up to \$1,000,000. Debra is a lawful permanent resident of the United States, having immigrated to the U.S. from Australia in 1994. She works a few hours when she can and is a recipient of Supplemental Security Income (SSI) and food stamps. She has two children, both under the age of five. One of her children is severely disabled and requires her continual presence throughout the night in order to be able to sleep.

While Debra and Bill dated, she was aware of his occupation but had never done any work for him. All that changed on May 4, 2001. Bill asked Debra if she would come answer telephones for him at his office for two weeks. He told her to urge people to send money to get loans. He also told Debra that he had not funded any loans, that he had spent all the fee money to gamble.

Debra worked for Bill for two weeks. Knowing that Bill was not funding loans, she nonetheless encouraged people to send in money. During the time she worked for Bill, Bill’s company obtained \$250,000 in fees, all from out of state. Shortly after Debra finished working for Bill, a federal grand jury returned an Indictment against Bill, charging him with a scheme to defraud that netted more than \$10,000,000 and had victims nationwide. Included in the fraud charges were the fees that had arrived while Debra worked for Bill and had made false assertions. The U.S. Attorney’s office has sent Debra a target letter, advising her that a Superseding Indictment is about to be sought adding Debra to the charges. Debra has contacted you and told you that she wishes to settle the case with a written plea agreement and disposition hearing.

A. As Debra’s attorney, what concessions would you seek from the Government as part of a plea agreement? Would you

**agree to the Superseding Indictment?
Why or why not?**

B. What concessions would you expect the Government to seek as part of the plea agreement?

C. Prior to the disposition hearing, what will you tell Debra the judge could ask her about during the plea colloquy?

Sample Question #3 – Federal Law

Sylvester is one of several defendants indicted in federal district court under 21 U.S.C. 960 for conspiracy to smuggle heroin into the United States. The indictment alleges that Sylvester recruited women in California to travel alone on individual trips to Bangkok, Thailand, to meet a contact. The contact gave each woman a suitcase, which the women would transport as luggage on a flight back to the U.S. The indictment further alleges that two of the women were arrested in the course of their trips. One of them, Gilda, was arrested at the Bangkok airport as she was boarding a flight to Los Angeles; she was prosecuted and given a life sentence. The other, Hillary, was arrested by Customs upon arriving at the Los Angeles airport; she has since pleaded guilty. Both women have agreed to cooperate against Sylvester and will testify as government witnesses at his trial.

The indictment identified Gilda and Hillary by name and identified them as unindicted co-conspirators who received instructions from Sylvester and made the trips to Southeast Asia to further the drug smuggling conspiracy. Sylvester, who has sustained several felony drug convictions in the past, retains Quentin.

A. What basic discovery should Quentin request by letter from the Assistant U.S. Attorney and on what authority or rules should the request be based?

Quentin has his investigator make contact with the Bangkok police, who tell the investigator that Gilda was interviewed on the day of her arrest and signed a detailed statement. In that statement, Gilda said that Sylvester recruited her to go to Thailand to bring back diamonds that she would be smuggling into the U.S. and that she had no idea that she would be transporting drugs. Quentin requested a copy of the statement, but the Bangkok police refused, stating that Quentin would have to obtain the statement and any other

police records pertaining to Gilda's arrest and prosecution from the U.S. Attorney's Office.

Quentin contacted Assistant U.S. Attorney Frank and requested a copy of the entire Bangkok police file on Gilda. Frank advised Quentin that the U.S. Attorney's Office had received the police and prosecution files from Thailand and did not find that the files contained anything that the government would be using in its case-in-chief or any information otherwise discoverable by the defense. On this basis, Frank declined Quentin's request for access to inspect and copy the files.

B. What procedural options are available to Quentin through the District Court to obtain access to the police and prosecution files and, in particular, Gilda's signed statement? What legal theories justify granting the defense request for access?

During trial preparation, Frank learns from the case agent that, several years prior, Hillary had been a confidential informant for a federal law enforcement agency that is not connected to this case. Hillary's status as an informant was terminated by that agency after the agency concluded that she had provided agents with false information on several occasions.

C. What obligation, if any, does the government have to disclose to Quentin the information regarding Hillary's prior work as a confidential informant and the termination of that work by the federal agency?

Sample Question #4 – Federal Law

Your client, Defendant, is charged with bank robbery in federal court. From the discovery materials, you learn the following.

At the date and time of the robbery, an individual entered a federally insured bank, approached Teller and said "your money or your life." Teller gave the individual money from her cash drawer and the individual ran out of the bank.

Teller gave the police the following general description of the robber: a Caucasian man, in his mid thirties, between five foot, eight inches and five foot, ten inches tall, wearing blue jeans and a white, short sleeve shirt. Manager, who claimed to witness the robbery, confirmed this description.

About 10 minutes after the robbery, Police Officer, who was in his patrol car about one mile from the bank, received the report of the robbery and the description of the robber over his police radio. Just after Police Officer received this information, he saw Defendant, who matched the general description of the robber, running down the sidewalk away from the direction of the bank. Thinking that this man may be the robber, Police Officer pulled over and ordered Defendant to stop. Defendant stopped and, after frisking Defendant and finding no weapons, Police Officer radioed Sergeant and told him what happened. Sergeant instructed Police Officer to hold Defendant until Sergeant could bring bank witnesses to the scene to make an identification.

About forty-five minutes later, Sergeant arrived at the scene with Teller and Manager in his police car. Teller, prior to receiving the field identification admonition, immediately identified Defendant as the man who robbed her. After hearing Teller's identification, Manager hesitated, but also identified Defendant as the robber.

- A. What identification evidence should the government attempt to introduce at trial?**
- B. What arguments can you make in seeking to suppress this evidence?**
- C. What arguments can the government make in response to your suppression arguments?**
- D. What rulings is the district court likely to make on your suppression arguments and why?**

Sample Question #5 – Federal Law

Defendant Bob is charged with co-defendant Abel in an indictment alleging they were part of a conspiracy to distribute narcotics. The specific narcotics charged are methamphetamine and cocaine base.

The prosecutor has tape-recordings of Abel reaching agreement to sell Rat 100 grams of methamphetamine at 10% purity and 50 grams of cocaine base. Abel recruited Bob to deliver 50 grams of cocaine base to Rat. As he was delivering the cocaine base to Rat, Bob was arrested by DEA agents. Bob confessed completely and told the agents where Abel was located. Bob made his statements without signing any cooperation agreement with the prosecutor.

Based on this information, the agents arrested Abel.

Bob, who is 23 years old, has one prior conviction involving petty theft where he was sentenced to probation. He successfully completed probation before being arrested for the delivery of cocaine base. Bob used and became addicted to cocaine base given to him by Abel, but Bob has never previously been involved in distributing narcotics. Bob agreed to deliver the drugs for Abel because they used to be part of the same gang. The gang members were required to help each other or suffer retribution. While Bob knew that Abel was involved in criminal activity, Bob did not know that Abel was involved in selling drugs until Abel asked him to deliver drugs to Rat. Further, Bob did not know the nature or the amount of drugs.

Bob grew up in a broken home. His father sexually abused him repeatedly when he was seven years old and left him when he was eight years old. His mother was busy working so he never received any parental guidance. He joined a gang for a year but dropped out. At the time of the arrest, Bob lived at home where he was the sole provider for his disabled grandmother and three children.

Without a plea agreement, Bob pled guilty to the charge of being part of a conspiracy to distribute narcotics. The factual basis of the plea includes Bob's knowledge that he was delivering narcotics given to him by Abel. The factual basis does not contain any facts pertaining to Bob's knowledge that he was delivering cocaine base or to his knowledge as to the amount of drugs. The factual basis does not contain any facts that Bob knew that Abel was negotiating other drug deals.

You are Bob's attorney. Please prepare a sentencing memo to be filed with the court with your recommendation as to the appropriate sentence. In your memorandum, please address the following:

- A. Discuss the mandatory maximum sentence. Explain your analysis.**
- B. Discuss any mandatory minimum sentence that may apply. Explain your analysis.**
- C. Explain how you calculated the appropriate guideline range.**
- D. Discuss any downward adjustments and/or departures that may apply.**

Sample Question #6 – Federal Law

Albert has been homeless for a number of years and lives in shelters or on the streets. His sister, Suzy, owner of a bed and breakfast, lives in Hawaii. Every once in awhile he has done some shoplifting and is on probation until August 1, 2001. He believes that voices are telling him to do bad things. One day, a real voice, belonging to Harry, spoke to him at the shelter. Harry told Albert that, if Albert drove a car into the United States from Mexico, he would pay Albert \$500. This was more money than Albert had seen in his entire life, so he jumped at the opportunity.

On June 1, 2001, Albert took the trolley down to the U.S. Mexican border. He met Harry at a parking lot just south of the Port of Entry. Harry handed him the keys to a battered van that was parked in the lot. Harry told Albert to drive very carefully because there was "precious cargo" in the van. Albert also heard the voices in his head telling him to drive the van into the U.S. Harry told Albert that he, Harry, would be following Albert in another car and not to worry.

As Albert approached the Port of Entry, a customs inspector asked him if he had anything to declare. He advised that he did not. He displayed no nervousness, and a roving narcotics detector dog walked past the van without alerting. Still, the customs inspector thought Albert "looked funny" and referred him to secondary inspection. At secondary, an inspector observed one screw to be a little shinier than the rest near the gas tank. The inspectors punched a 6-inch hole in the trunk and saw nothing. The gas tank was removed and inspected. Inside the gas tank were packages containing more than 20 kilograms of cocaine. Albert was placed into custody.

After more than 20 hours in custody, Albert was advised of his rights and agreed to speak with investigating agents. He told them about Harry, but also mentioned the voices in his head telling him to do bad things.

Albert was charged by a complaint in federal court with Importation of Controlled Substance in violation of Title 21, United States Code, Sections 952 and 960. At his initial appearance, you were appointed as his counsel. The Government moved to detain Albert pending trial.

- A. What are the ways in which the Government may obtain a probable cause determination in order to proceed with the case? What is the most common way for the Government**

to obtain a probable cause determination?

- B. What are the bases the Government may use to seek detention of Albert? Describe the burden of proof the Government must sustain as to each basis for detention, and list the evidence the Government would adduce under each basis.**
- C. As Albert's defense attorney, what, if any, bail recommendations would you make? List the facts you would use to support your recommendation.**
- D. As Albert's case progresses through the system, what, if any, motions would you make on his behalf? Briefly list the facts you would use to support your motions.**
- E. If Albert is released from custody, he wants to move to Arizona and start life anew. Can Albert resolve his case living somewhere other than where the crime was committed? If so, how?**